No. 06-1148

IN THE

Supreme Court of the United States

RHONDA COLEMAN

Petitioner

v.

DENNIS W. JACKS

Respondent

On Petition for a Writ of
Certiorari to the Supreme
Court of the State of Arkansas

PETITION FOR REHEARING

Rhonda Coleman, Pro se
P.O. Box 21194
White Hall, AR 71612
(870) 247-1602

QUESTIONS PRESENTED FOR REVIEW

Whether the Supreme Court of Arkansas abused its judicial discretion by denying Petition for Review when the Arkansas Court of Appeals decision denies Due Process and violates the 7th Amendment?

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INTRODUCTION

This medical negligence case involves an individual, Rhonda Coleman, who is also a Registered Nurse that has been seeking justice for the past 7 years, for acts of negligence that was committed against her.

This case involves multiple acts of negligence that occurred while under a continuous course of treatments that began April 16,1999 and ended November 7, 2000. **Appendix ("App."), App. E.**

This Petition for Rehearing is not meant to reargue that which is in the Petition for a Writ of Certiorari that was denied on September 24, 2007, but to address substantial grounds that were not previously presented.

STATEMENT OF FACTS

The Arkansas Court of Appeals affirmed the decision of the trial court granting a Summary Judgment for the Respondent October 4, 2006. A Petition for Review was filed with the Arkansas Supreme Court on October 23, 2006. It was denied on November 16, 2006. A Writ of Certiorari was filed the United States Supreme Court February 20, 2007. It was denied on September 24, 2007.

ARGUMENT

I. DUE PROCESS WAS DENIED WHEN THE ARKANSAS SUPREME COURT FAILED TO REVIEW THE DECISION OF THE COURT OF APPEALS DECISION

A. The Court of Appeals Affirmed The Trial Court Even Though They Violated Arkansas and Federal Rule of Civil Procedure and Violated Rules of Professional Conduct.

Rule 12(a). Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings of the Arkansas and Federal Rules of Civil Procedure states: that a defendant shall serve an answer within 20 days after being served with summons and complaint.

A Complaint was filed against Respondent and others, alleging medical negligence in the Circuit Court of Jefferson County,

Arkansas on May 31, 2001 seeking damages for pain and suffering. **Record("R") 3-8, App I.** The attorney of record later filed a Motion To Be Relieved. **R 9-10. App. J.** An Order of Dismissal was granted October 9, 2001 without prejudice but, the Judge stated that it was dismissed for failure to obtain service **R. 11, App. K** even though the Certificate of Service certifies that a copy of the pleading had been sent by U.S. mail by certified and restricted delivery to all opposing parties and the clerk signed that a summons was issued at 1:30 pm on the day it was filed. **R. 3, 8, App. I.**

That Judge has since been removed from the bench for unprofessional conduct in other matters.

This dismissal was an involuntary dismissal and pursuant to **Rule 41(b) of the Arkansas Rules of Civil Procedure Dismissal of actions,** a dismissal under this subdivision is without prejudice to a future action.

The Complaint filed by attorney Gail Anderson May 31, 2001 by law, tolled the statue of limitations.

Rule 3. Commencement of Action of the Arkansas Rules of Civil Procedure states: that if the action is dismissed, it was nonetheless commenced for statute of limitations purposes and may be refilled within one year under the savings statute, Ark. Code Ann. § 16-56-126. See Forrest City Machine Works v. Lyons, 315 Ark. 173, 866 S.W.2d 372 (1993) (savings statute is applicable when action is dismissed for insufficient service of process).

The Respondent's Answer was not filed until October 4, 2002. **R. 18-23, App. L.** He asserted that Petitioner's allegations and claims were barred by the applicable statue of limitations codified at **Ark. Code Ann. §16-114-203** because of failure to obtain service although the certificate of service and the signature of the circuit clerk stated otherwise. **R. 3, 8, App. I.** No other Defendant made that assertion.

B. The Court Of Appeals and the Trial Court Acted in a Manner That Violated Professional Conduct When They Totally Ignored The Order Set By Trial Court And Sworn Statements Already In The Record.

The Order from the status hearing held by the Trial Court

on October 20, 2004 stated that responses to discovery would be on or before Friday, November 26, 2004. **R. 94-95, App. H.**

The trial court stated in its Order granting Summary Judgment that Rhonda Coleman failed to timely identify any expert witness that would testify in support of Plaintiff's allegations prior to the Court's deadline of October 27, 2004. **R. 316, App. B** even though there were sworn statements in Notarized Brief Opposing Summary Judgment and Supplemental Responses to Interrogatories and Production of Documents stating that treating physician's would be subpoenaed. **R. 282, 305, App. D.**

Sworn responses to Admissions were faxed and filed on November 22, 2004 admitting that treating physician's would be subpoenaed as expert witnesses. **R. 102-104, App. C.**

The Respondent in his Brief In Support For Summary Judgment stated that Plaintiff, Rhonda Coleman could not and did not intend to use expert testimony to support her allegations of medical negligence against Dr. Jacks **R. 126, App. F** even though the record already contained sworn statements in Responses to Request for Admissions that stated otherwise. **R. 102-104, App. C.**

The Arkansas Court of Appeals stated that "Rhonda failed to produce any evidence (in the form of affidavits, depositions, correspondence, and the like) in response to Dr. Jacks' Summary Judgment motion," regardless to sworn statements already in the record **App. A.**

Notarized Supplemental Responses to Separate Defendant Dennis W. Jacks Interrogatories and Request for Production of Documents were faxed to the Defendant's Attorney on October 27, 2004 **R. 296-97, App. D.** Response to **Interrogatory 2:** which stated "please give the names, addresses, occupations, and telephone numbers of all persons known or believed by you or your attorneys to possess information regarding the matters alleged in your Complaint." My responses listed the names of my treating physicians Dr. Steven Wright and Dr. Gayle Reede-Jones as well as other's as possessing information regarding matters alleged in Complaint. **R. 282, App. D.**

Interrogatory 8: stated please state whether you will present any

documentary at the trial of this matter. If your answer is affirmative, please state:

(a) The identity of the documents;
(b) The facts and /or opinions to be presented or described by the documents; and
(c) The custodian of said documents.

Response: Yes R. 287-288, App. D.
These were all sworn notarized statements

Rule 56 (e) of the Arkansas and the Federal Rules of Civil Procedure implies that a Summary Judgments motion may be opposed by any of the evidentiary materials listed in **Rule 56 ©** such as answers to interrogatories.

Ark. Code §16-40-103. states in part:
Modes of taking testimony of witnesses
The testimony of witnesses is taken in three (3) modes:

(1) By affidavit;
(2) By deposition;
(3) By oral examination

(b) An affidavit is a written declaration under oath, made without notice to the adverse party.

In McLaughlin v. Liu, 849 F.2d 1205, 1207-08 (9th Cir. 1988), a district court's summary judgment in favor of the plaintiff was reversed where the court disregarded the defendant's sworn declaration and sworn answers to interrogatories as "implausible.

II. WHEN THE ARKANSAS SUPREME COURT FAILED TO REVIEW THE COURT OF APPEALS DECISION PETITIONER'S 7th AMENDMENT WAS VIOLATED.

C. The Order Granting Summary Judgment Was Unjustified.

The Motion for Summary Judgment was prematurely filed and unjustifiably granted. **App. G.**

The Standard for Entry of Summary Judgment

A moving part, as a prerequisite of summary judgment, must demonstrate an absence of evidence to support the non-moving party's case. Celotex v. Catrett, 477 U.S. 317, 325 (1986). Rule 56(e) of the Arkansas Rules of Civil Procedure states, in part, the

following:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegation or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial ...

Sworn statements that were already in the record reveal aspects from which inconsistent hypothesis may reasonably be drawn and reasonable men might defer.

III. CONCLUSION

The Arkansas Supreme Court's failure to review the decision of the Court of Appeals is a gross miscarriage of justice.

Based on the foregoing, to ensure that due process right are not violated and to prevent a miscarriage of justice, Petitioner request that her Petition for rehearing be granted.

Respectfully submitted.

Rhonda Coleman, pro se
P.O. Box 21194
White Hall, AR 71612
(870) 247-1602

CERTIFICATION OF COUNSEL RULE (44)

I certify that the Petition for Rehearing is presented in good faith and not for delay. The grounds not covered heretofore include violation of Petitioner's Constitutional Rights.

Rhonda Coleman, Pro se

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M.D. **R. 18-23** 20b-22b

NOT DESIGNATED FOR PUBLICATION
DIVISION III
ARKANSAS COURT OF APPEALS
No. CA06-44
Opinion Delivered October 4, 2006

RHONDA COLEMAN	APPEAL FROM THE JEFFERSON COUNTY
APPELLANT	CIRCUIT COURT [NO. CV2002-516-2-5]
	HON. ROBERT H. WYATT JR. JUDGE
DENNIS W. JACKS, M.D.	
APPELLEE	

SAM BIRD, Judge

Dr. Alex Finkbeiner, Chairman of the Department of Urology at the University of Arkansas for Medical Sciences, in which Dr. Finkbeiner opined that there was no medical evidence to support Rhonda's allegations against Dr. Jacks. In her response to Dr. Jack's summary judgment motion, Rhonda produced no evidence (in the form of affidavits, depositions, correspondence, and the like) to rebut Dr. Finkbeiner's opinion other than to say she intended to supoena her treating physician's as expert witnesses to corroborate her allegations.

In the case at bar, Rhonda failed to produce any evidence (in the form of affidavits, depositions, correspondence, and the like) in response to Dr. Jack's summary-judgment motion. The fact that she indicated that she would produce expert testimony at some point is insufficient; she failed to meet "proof with proof" as required by law and, thus, there was no genuine issue of material fact for trial.

Affirmed

PITTMAN, C.J., and NEAL, J., agree.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

RHONDA COLEMAN **PLAINTIFF**
V **CASE NO: CV-2002-515-2-5**
DENNIS W. JACKS, M. D. **DEFENDANT**

ORDER

Now on December 13, 2004, Plaintiff, Rhonda Coleman, pro se, and Richard L. Angel, Angel Law Firm, PLLC, on behalf of Defendant, Dennis W. Jacks, M.D. appeared before this Court for legal arguments in reference to the motion for Summary Judgment filed on behalf of Defendant, Dennis W. Jacks, M. D. **R. 309, App. B.**

FILED
DEC. 29, 2004
Jeanette Hence
Circuit Clerk
Jefferson County, Arkansas

Conclusions of Law

2. Plaintiff, Rhonda Coleman, pro se, in her discovery responses, failed to timely identify any expert witnesses that would testify in support of Plaintiff's allegations prior to the Court's discovery deadline of October 27, 2004; **R. 316, App. B.**

3. Plaintiff, Rhonda Coleman, pro se, in her Response to Dr. Jacks' Motion for Summary Judgment, did not meet "proof with proof" as require by Rule 56(e) of the Arkansas Rules of Civil Procedure. Plaintiff, Rhonda Coleman. Pro se, did not produce any evidence to this Court, in the form of Affidavits, deposition testimony, correspondence, portions of medical records, or any other documentary evidence to support Plaintiff's contentions that her treating physicians, Dr. Wright and /or Dr. Reede-Jones would testify at trial to corroborate her allegations of medical negligence against Dr. Jacks. Further, Plaintiff, Rhonda Coleman, pro se, did not produce any evidence to oppose or contradict the opinions of dr.

Jacks' expert, Dr. Alex Finkbeiner .

IT IS SO ORDERED this 28th day of December, 2004

"s/John B. Plegge
Honorable John b. Plegge
Special Circuit Judge
Assignment No. 04-176

PREPARED BY:
Richard L. Angel
Angel Law Firm PLLC.
100 Morgan Keegan Drive, Suite 420
Little Rock, Arkansas 72202
(501) 975-7700

R 318, App. B.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

RHONDA COLEMAN **PLAINTIFF**

vs. **CASE NO.: CV-2002-516-2-5**

DENNIS W. JACKS, M.D., JEFFERSON REGIONAL MEDICAL CENTER; AND JOHN DOES 1-10 ALL JOINTLY AND SEVERALLY

DEFENDANTS

RESPONSES TO ADMISSIONS PROPOUNDED TO PLAINTIFF, RHONDA COLEMAN

Comes, Plaintiff Rhonda Coleman, for her **R. 102-104, App C.**

Responses to Defendant Dennis W. Jacks, M.D., Request for Admission states:

FILED

NOV 22 2004

"s/Brenda Hardin DC

JEANETTE HENCE
Circuit & County Clerk
JEFFERSON COUNTY, ARKANSAS

REQUEST FOR ADMISSION NO. 3: Admit that none of the treating physicians of Plaintiff, Rhonda Coleman, including, but not limited to, Steven Wright, M.D., and Gail Reede -Jones, M.D., will be called at trial as expert witnesses on behalf of Plaintiff, Rhonda Coleman, to testify in support of any allegations by Plaintiff, Rhonda Coleman, that Defendant, Dennis W. Jacks, M.D., was negligent in his care and treatment of Plaintiff, Rhonda Coleman, and that such negligence was a proximate cause of any injuries or damages to Plaintiff, Rhonda Coleman.

RESPONSE NO. 3: Plaintiff denies admission. Plaintiff admits that she will subpoena both Dr. Steven Wright and Dr. Gail Reede- Jones to corroborate her allegations that Dr. Jacks was negligent in his care and treatment of Plaintiff, Rhonda Coleman and that such negligence was a proximate cause of injuries or damages to Plaintiff. **R 103. App. C**

Respectfully submitted,
Rhonda Coleman, pro se
P.O. Box 2863
Pine Bluff, AR 71613

By_"s/_Rhonda Coleman_

_____
Rhonda Coleman, pro se

CERTIFICATE OF SERVICE

I, Rhonda Coleman, certify that a copy of the foregoing was sent via facsimile and hardcopy sent via U.S. Mail, postage prepaid, this 22nd day of November, 2004, to the following:

Angel Law Firm, PLLC

100 Morgan Keegan Drive, Suite 420
Little Rock, Arkansas 72202

R. 104, App. C

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

RHONDA COLEMAN

PLAINTIFF

vs. **CASE NO.: CV-2002-516-2-5**

DENNIS W. JACKS, M.D., JEFFERSON REGIONAL MEDICAL CENTER; AND JOHN DOES 1-10 ALL JOINTLY AND SEVERALLY

DEFENDANTS

SUPPLEMENTAL RESPONSES TO SEPARATE DEFENDANT DENNIS W. JACKS INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

Comes, Plaintiff Rhonda Coleman, for her Responses to Defendant Dennis W. Jacks, M.D., Interrogatories states: **R. 281, App. D.**

FILED
"s/Laura Patterson, D.C
NOV 29 2004
JEANETTE HENCE
Circuit & County Clerk
JEFFERSON COUNTY, ARKANSAS

INTERROGATORY NO. 7: Please sate whether you, your attorney, or any other representative on your behalf, have obtained statements (written or recorded) from any person (including Defendant Jacks) regarding their opinions or knowledge

about the matters alleged in your Complaint, and if so, please state

(a) From whom the statement was obtained;

(b) The date the statement was obtained;

(c) The form in which the statement was obtained; and

(d) Who has possession of the statement.

(Plaintiffs are requested to provide any such statements, if obtained, in Request for Production No. 6.)

RESPONSE: I have a copy of a faxed progress note from Dr. Dennis Jack's office dated April 16, 1999, suggesting that I have surgery. I have medical records. **R. 286, App. D.**

INTERROGATORY NO. 8: Please state whether you will present any documentary evidence at the trial of this matter. If your answer is in the affirmative, please state:

(a) The identity of the documents;

(b) The facts and/or opinions to be presented or described by the documents; and

(c) The custodian of said documents.

RESPONSE: Yes. (1) Progress note from Defendant dated 4/16/99 showing that it was Dr. Dennis Jacks opinion that I should have a hysterectomy. The document is in my possession and there should be a copy in the medical records of Dr. Jacks, M.D., regarding his care and treatment of Plaintiff, Rhonda Coleman. (2) Medication sheets to show medication errors occurred at JRMC June 1999. (3) Nurses notes to show that Defendant gave an order for pain prior to surgery June 2, 1999. (4) Physician's hospital progress note showing that Defendant was aware of Plaintiffs' complaint prior to surgery June 2, 1999. (5) Consent form dated June 2, 1999 prior to surgery to show that no physician signature exist. (6) Medical records from Dr. Steven Wright and Dr. Gayle reed Jones to show that Plaintiff has been seen on numerous occasions for complaints of pain and urological symptoms. (7) Results of labs, x-rays, CT and renal ultrasound that are abnormal. (8) Physician's orders dated June 2, 1999 to show that Defendant gave an order for pain prior to surgery June 2, 1999. **R. 287, App. D.**

Respectfully submitted,

Rhonda Coleman, pro se
Pine Bluff, AR 71613
By "s/ Rhonda Coleman

CERTIFICATE OF SERVICE

I Rhonda Coleman, certify that a copy of the foregoing was sent via facsimile this 27th day of October, 2004. Hard copy sent via U. S. mail postage pre-paid to the following:

ANGEL LAW FIRM
100 MORGAN KEEGAN DRIVE, SUITE 420
LITTLE ROCK, AR 72202-2213

"s/Rhonda Coleman 10/27/04

SWORN to before me this 27th day of October, 2004

"s/Betty J. LaGrone
NOTARY PUBLIC

My Commission Expires:
August 31, 2012

_"s/Rhonda Coleman

Rhonda Coleman

SUBSCRIBED AND SWORN to before me this 21st day of November, 2004

"s/ Betty J LaGRONE
Notary Public

My Commission Expires: August 31, 2012

R. 297, App. D.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

RHONDA COLEMAN

PLAINTIFF

vs. **CASE NO.: CV-2002-516-2-5**

DENNIS JACKS

DEFENDANT

REPLY BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FOR DEFENDANT, DENNIS W. JACKS, M.D.

Comes, now Plaintiff, Rhonda Coleman, with my response in Opposition to Motion of Summary Judgment for Defendant Dennis W. Jacks, M.D., which states:

FACTUAL BACKGROUND

Plaintiff was initially seen by Defendant Dennis W. Jacks,

FILED
NOV 22 2004
JEANETTE HENCE
Circuit Clerk
JEFFERSON COUNTY, ARKANSAS
"s/Brenda Hardin, DC

M.D. ("Dr. Jacks"), on April 16, 1999 after being referred to him by Dr. Sterling Roaf, OB/GYN for urinary incontinence. Dr Jacks recommended to Plaintiff that she have a hysterectomy along with bladder repair. **R 298, App. E.**

Medical records from Dr. Jacks indicate that Plaintiff was seen June 1999 and again by Dr. Jacks for a follow up appointment on July 27, 1999 after her surgery and was advised to return to his office as needed. **R 299, App. E.**

In November 2000, at the suggestion of her primary physician, Plaintiff was advised to go back to Dr. Jacks for complaints of flank pain and for problems with urination since he

had performed her bladder surgery. **R 299. App. E.**

Plaintiff was seen again by Dr. Jacks on November 7, 2000 for complaints of having blood and nitrite in her urine, and flank pain. Defendant insisted that Plaintiff was experiencing pain from irritable bowel syndrome, even though Plaintiff insisted that she had been experiencing flank pain.

Defendant failed to order test to check Plaintiffs' kidney functions prior to this procedure exposing her to a nephrotoxic agent. Plaintiff was notified by Dr. Jacks by phone a few days later that the IVP was normal and that she should just drink plenty of water and take her medicine for Irritable Bowel Syndrome.

Plaintiff continued to experience flank pain and continued to have problems with urination, so she requested that her primary physician refer her to a kidney specialist. It was after this referral that Plaintiff was advised that she had a possible kidney stone then later told that she had a blood clot to her kidney and would have to be on antibiotics indefinitely. **R 299, App. E.**

An expert is not needed to support Plaintiffs' allegations that she has suffered pain since November 2000. The medical records of the Plaintiff speak for itself. It is documented that Plaintiff has complained of pain since November 2000. **R 300, App. E**

The Plaintiffs' medical records clearly reflect that she has complained of flank pain and problems with urination since November 9, 2000. Documentation in the medical records of Plaintiff stated that she had a blood clot to her kidney. **R 302, App.E.**

Plaintiff intends to subpoena her treating physicians as expert witnesses to corroborate her allegations against the Defendant. Plaintiff has evidence in her medical records to substantiate her allegations against the Defendant. **R 305, App.E**

The Defendant's expert witness' opinions are not specifically supported by all of Plaintiffs' medical records. Defendants Exhibit "P" titled Medical Records of Rhonda Coleman Reviewed By Alex Finkbeiner, M.D., don't contain all copies of Plaintiffs' hospital records. It contains hand picked records. There is substantial relevant evidence documented in Plaintiffs' hospital medical records to

substantiate Plaintiffs' allegations against the Defendant. **R 305, App. E.**

Respectfully submitted,

Rhonda Coleman, pro se
P.O. Box 2863
Pine Bluff, AR 71613

CERTIFICATE OF SERVICE

I, Rhonda Coleman, certify that a copy of the foregoing was mailed via U.S. Mail, postage prepaid, this 22nd day of November, 2004, to the following:

Angel Law Firm, PLLC
100 Morgan Keegan Drive, Suite 420
Little Rock, Arkansas 72202

"s/Rhonda Coleman

SUBSCRIBED AND SWORN to before me this 21st day of November, 2004

"s/Betty J. LaGrone
Notary Public
My Commission Expires: August 31, 2012

R 308, App. E.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

RHONDA COLEMAN **PLAINTIFF**

v.

CASE NO: CV-2002-516-2-5

DENNIS W. JACKS, M.D. **DEFENDANT**

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT, DENNIS W.

JACKS, M. D.

Separate Defendant, Dennis W. Jacks, M.D. by and through his attorney, Richard L. Angel, Angel Law Firm, PLLC, submits his Brief in Support of his Motion for Summary Judgment. **R. 113, App. F.**

FILED
NOV. 15, 2004
Jeanette Hence
Circuit Clerk
Jefferson County, Arkansas
"s/Brenda Hardin

CONCLUSION

Plaintiff, Rhonda Coleman, cannot produce an expert witness and does not intend to use testimony to support her allegations of medical negligence against Dr. Jacks. Further, Plaintiff, Rhonda Coleman, cannot produce an expert witness and does not intend to to use expert testimony to support contentions that any of her alleged damages or injuries were proximately caused by any negligent act or omission by Dr. Jacks. Without expert testimony, Plaintiff cannot meet her burden of proof in this medical negligence case. The medical issues in this case are clearly not within the comprehension of a jury of lay persons. The alleged failure to diagnose medical conditions and treat those conditions require expert witnesses to assist the jury in understanding the applicable standard of care for medical providers. If plaintiff, Rhonda Coleman, was allowed to proceed to trial against Dr. Jacks, a jury would be left to speculate as to the applicable standard of care to apply to Dr .Jacks and whether any of Plaintiff's alleged damages or injuries were caused by the alleged negligence of Dr. Jacks. Further, Plaintiff, Rhonda Coleman, should not be allowed to invoke the doctrine of res ipsa loquitur since Dr. Jacks has produced "evidence to the contrary" through an expert witness. **R.126, App. F.**

Since Plaintiff, Rhonda Coleman, cannot present the requisite proof on the essential elements of her claims against Dr. Jacks, then

there are no remaining issues of material fact. As such, summary judgment is appropriate, and dr. Jacks respectfully request that the Court summarily dismiss with prejudice all of Plaintiff's causes of action against him.

Respectfully submitted,

ANGEL LAW FIRM, PLLC
100 Morgan Keegan Drive, Suite 420
Little Rock, Arkansas 72202-2213
(501) 975-7700
By: "s/Richard L. Angel
Arkansas Bar No. 87004

R. 127, App. F.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

RHONDA COLEMAN **PLAINTIFF**

vs. **CASE NO.: CV-2002-516-2-5**

DENNIS W. JACKS, M.D. **DEFENDANTS**

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT, DENNIS W. JACKS, M.D.

Comes now Defendant, Dennis W. Jacks, M.D., by and through his attorney, Richard L. Angel, Angel Law Firm, PLLC, and for his Motion for Summary Judgment, pursuant to Rule 56 of the Arkansas Rules of Civil Procedure, states as follows:

1. On May 31, 2001, Plaintiffs, Rhonda Coleman and James Coleman, through their attorney, Gail Anderson, Anderson Law Firm, Little Rock, Arkansas, filed their Complaint against Separate Defendant, Dennis W. Jacks, M.D., (hereafter "Dr. Jacks") and other Defendants. (Attached hereto as Exhibit "A" is a copy **R. 105, App.**

G.

of Plaintiffs' Complaint filed on May 31, 2001.)

2. In Plaintiffs' Complaint filed on May 31, 2001, Plaintiffs asserted claims for medical negligence against Dr. Jacks and other medical care providers. In Plaintiffs' Complaint, more specifically, Paragraph 5 and 6, plaintiffs made allegations against Dr. Jacks and other medical care providers related to medical events occurring on Junel, 1999, June 2, 1999, and up through November 9, 1999.

3. On September 20, 2001, Plaintiffs' counsel, Gail Anderson, Anderson Law Firm, filed a Motion To Be Relieved. In paragraph 6 of Ms. Anderson's Motion To Be Relieved, Ms. Anderson requested to be relieved as Plaintiffs' counsel due to "non-responsiveness" and non-payment" by plaintiff, Rhonda Coleman, and because "it is abundantly clear that Plaintiff never intended to pay undersigned but instead simply sought an attorney to file her papers for her." **R. 105, App. G.**

4.Plaintiffs, Rhonda and James Coleman, did not serve Dr. Jacks with a Summons and Plaintiffs' Complaint within 120 days of Filing of Plaintiffs' Complaint as required by Rule 4 of **R. 105, App** the Arkansas Ruled of Civil Procedure. The 120th day to properly effectuate service on defendant Jacks and the other named Defendants was September 28, 2001. Prior to September 28, 2001, Plaintiffs, Rhonda Coleman and James Coleman, did not request an extension of time from the Court to obtain timely and proper service of process on Dr. Jacks and the other named Defendants.

5. On October 9, 2001, the Court entered an Order of Dismissal. In the Order, the Court stated, "that pursuant to Rule 4(i) of the Arkansas Rules of Civil Procedure, the Complaint filed May 31, 2001 is hereby dismissed without prejudice for failure to obtain service."

6. On May 30, 2002, Plaintiffs, Rhonda Coleman and James Coleman, filed their Complaint against Dr. Jacks and other named Defendants. Plaintiff, Rhonda Coleman, filed this Complaint in her pro se capacity. **R.106, App. G.**

7. On October 4, 2002, Dr. Jacks, through his attorney, filed his Answer to Plaintiffs' Complaint. Defendant Jacks denied any and

all allegations of medical malpractice asserted by Plaintiffs and further asserted that Plaintiffs' allegations and claims for damages were barred by the applicable statue of limitations codified at Ark. Code Ann.§16-114-203.

8. On October 18, 2002, Plaintiffs' filed their Amended Complaint. **R. 106 107, App. G.**

Respectfully submitted.
ANGEL LAW FIRM, PLLC
100 Morgan Keegan Drive, Suite 420
Little Rock, Arkansas 72202-2213
(501) 975-7700

BY: "s/ Richard l. Angel
Richard L. Angel
Arkansas Bar No. 87004

CERTIFICATE OF SERVICE

I, Richard L. Angel, certify that a copy of the foregoing document was mailed by certified mail, postage prepaid, this 12th day of November, 2004, to the following:

Rhonda Coleman, Pro Se
P.O. Box 2863
Pine Bluff, AR 71613

"s/ Richard L. Angel
Richard L. Angel

R. 112, App. G.

THE CIRCUIT COURT OF JEFFERSONCOUNTY,
ARKANSAS ELEVENTH JUDICIAL DISTRICT, WEST,
FIFTH DIVISION

RHONDA COLEMAN PLAINTIFF

V. NO.CV-2002-516-2-5

DENNIS W. JACKS DEFENDANT

ORDER

Now on this day comes on this matter for a status hearing on the above-captioned case. The Plaintiff appeared pro se, and the defendant, Dennis Jacks, M.D., appeared by and through his attorney, Richard L. Angel, Angel Law Firm, PLLC.

The Court finds as follows:

1. That all discovery will be complete on or before Wednesday, October 27, 2004.

2. That responses to the discovery will be on or before Friday, November 26, 2004.

3. That any motions will be on or before Monday, November 15, 2004.

4. That a hearing on the motions will be held on Friday, December 10, 2004, at 1:30p.m.

5. That an order setting case for a three-day jury trial will be sent to the parties contemporaneous with this order. **R 94-95, App. H.**

FILED
Oct 21 2004
JEANETTE HENCE
Circuit Clerk
JEFFERSON COUNTY, ARKANSAS
Angel Law Firm, PLLC

IT IS SO ORDERED THIS 20 DAY OF OCTOBER, 2004

"s/JOHN B. PLEGGE
SPECIAL CIRCUIT JUDGE
ASSIGNMENT NO. 04-176

Xc Ms. Rhonda Coleman, Pro se
P.O. Box 2863

Pine Bluff, AR 71613-2863

Mr. Richard L. Angel
Angel L Firm, PLLC
100 Morgan Keegan Drive, Suite 420
Little Rock, AR 72202-2213

R 94-95, App. H.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

RHONDA COLEMAN **PLAINTIFF**
AND JAMES COLEMAN

vs. **CASE NO.: CV-2001-334-3**

DENNIS W. JACKS, **DEFENDANT**

M.D., JEFFERSON REGIONAL MEMORIAL HOSPITAL; SOUTH ARKANSAS UROLOGY AND JOHN DOES, 1-10; ALL JOINTLY AND SEVERALLY

COMPLAINT

Comes now Plaintiffs, by and through their attorney, THE ANDERSON LAW FIRM, and for their Complaint against the defendants, and states as follows:

JURISDICTION

1. Plaintiffs are residents of Jefferson County, Arkansas. The defendants South Arkansas Urology (hereinafter "SAU") and Jefferson Regional Memorial Hospital (hereinafter" JRMH"), held themselves out to the general public as institutions in the medical/hospital business who by and through its principals, servants, agents and employees was skilled in the care and treatment of patients admitted and for which it made financial charge **R. 3,**

for such services. Equally and at all time material hereto, JRMH and SAU acted by and through their principals, servants, agents and employees in Jefferson County, Ark. **R. 3, App. I.**

FILED IN MY OFFICE AND
SUMMONS ISSUED AT 1:25
O'CLOCK P.M.
5-31-01 DATE
JEANETTE HENCE CLERK
"s/Laura Patterson

R. 3, App. I.

Respectfully submitted,
THE ANDERSON LAW FIRM
"s/Gail Anderson
Gail Anderson
P.O. Box 23011
Little Rock, AR 7221
(510) 660-4529

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing pleading has been sent to all opposing parties and attorneys of record by placing a copy same in the U.S. mail, certified, restricted delivery, with proper postage affixed. Dated this 28th day of May, 2001. BY: "s/Gail Anderson

R. 8, App. I.

IN THE CIRCUIT COURT OF JEFFERSON, ARKANSAS

RHONDA COLEMAN — PLAINTIFF
V. NO. CIV02001-334-3

JEFFERSON MEMORIAL HOSPITAL, Et al. — DEFENDANTS

R. 9-10, App. J.

MOTION TO BE RELIEVED

Comes now undersigned Counsel and moves this Court to be relieved in this matter and for cause states:

1. Counsel was approached in regards providing to representation to Plaintiff, Rhonda Coleman in connection with malpractice by Defendants.
2. Representation and other matters were discussed, and in particular, the fee agreement was discussed.
3. At the time of the consultation, Plaintiff indicated that she understood the fee requirements and that she would adhere to the said requirement for representation. Specifically, Plaintiff was that she must pay the requisite down payment amount before representation would begin. She stated she would.
4. During the interval, the time period for the statue of limitations arose, and undersigned filed the complaint to toll the statue.
5. Since undersigned has not heard from the Plaintiff, Plaintiff has made no additional payments, and Plaintiff has otherwise been unresponsive and has failed to respond or to correspond to undersigned at all.
6. Accordingly, and for all the foregoing reasons, undersigned would request that she be relief form further obligation in this matter due to non-responsiveness and non-payment. Equally, it is abundantly clear that Plaintiff never intended to pay undersigned, but instead simply sought an attorney to file papers for her.
7. Affirmatively, there are no unearned fees and plaintiff has time to procure service, other counsel, proceed pro se, or to non-suit in this matter; and Plaintiff has been provided notice of instant request for relief. **R. 9, App. J.**

FILED
SEP 20 2001
JEANETTE HENCE
Circuit Clerk
JEFFERSON COUNTY, ARKANSAS
"s/Brenda Hardin

R. 9, App. J.

Wherefore, all premises considered, counsel prays that the Court relieves undersigned counsel in regards in this matter as it would be an injustice to compel continued representation of the Plaintiff by undersigned counsel.

Respectfully Submitted,
"s/ Gail Anderson
ANDERSON LAW FIRM
P.O. Box 23011
Little Rock, AR 7221
(501) 562-2529

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing pleading has been sent to all opposing parties and attorneys of record by placing a copy of same in the U.S mail, proper postage affixed. Dated this 30th day of August, 2001.

BY: "s/ Gail Anderson

R. 10, App. J.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
ELEVENTH JUDICIAL DISTRICT, WEST, THIRD DIVISION
RHONDA COLEMAN AND JAMES COLEMAN — PLAINTIFF
V. NO. CIV-2001-334-3
DENNIS W. JACKS, M.D. et al — DEFENDANT

ORDER OF DISMISSAL

That pursuant to Rule 4(i) of the Arkansas Rules of Civil Procedure, the Complaint filed May 31, 2001, is hereby dismissed without prejudice for failure to obtain service.

IT IS SO ORDERED THIS 9 DAY OF OCTOBER, 2001

"s/Fred D. Davis, III
FRED D. DAVIS
CIRCUIT-CHANCERY JUDGE

Xc: Ms. Gail Anderson
The Anderson Law Firm
P.O. Box 23011
Little Rock, AR 7221

FILED
OCT – 9 2001
JEANETTE HENCE
Circuit Clerk
JEFFERSON COUNTY, ARKANSAS

R. 11, App. K.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

RHONDA COLEMAN AND
PLAINTIFFS
JAMES COLEMAN
Vs. **CASE NO: CV-2002-516-2**
DENNIS W. JACKS, M.D.,
DEFENDANTS
JEFFERSON REGIONAL
MEDICAL CENTER; AND
JOHN DOES 1-10 ALL

JOINTLY AND SEVERALLY

ANSWER ON BEHALF OF SEPARATE DEFENDANT, DENNIS W. JACKS, M.D.

Comes now Separate Defendant, Dennis W. Jacks, M.D. (hereinafter "Defendant Jacks"), by and through his attorney, Richard L. Angel, Angel Law Firm PLLC, and for his Answer to the Complaint of Plaintiffs, Rhonda Coleman and James Coleman, states as follows:

1. Defendant Jacks denies that he is an "institution" inthe medical/hospital business" as asserted in Paragraph 1 of Plaintiffs Complaint. Defendant Jacks further denies that he is a principal, servant, agent and/or employee of Jefferson Regional Medical Center (hereinafter "JRMC"). Defendant Jacks does not possess the necessary information to either admit or deny the remaining allegations contained in paragraph 1 of Plaintiffs' Complaint, and on this basis, these remaining allegations are denied.

2. Defendant Jacks admits that at all times referenced in Plaintiffs' Complaint, he was a physician duly licensed to practice medicine in the State of Arkansas and that he was practicing in the medical specialty of urology. Defendant Jacks denies the remaining allegations contained in paragraph 2 of Plaintiffs' Complaint

FILED
OCT- 4 2002
JEANETTE HENCE
Circuit Clerk
JEFFERSON COUNTY, ARKANSAS
"s/ Brenda Hardin

R. 18, App. L

31. Defendant Jacks affirmatively pleads that any and all damages sustained by Plaintiff, Rhonda Coleman and James Coleman, if any, were the result of intervening proximate causes.

R. 22, App. L

CERTIFICATE OF SERVICE

I, Richard L. Angel, certify that a copy of the foregoing document was mailed, postage prepaid, this 3rd day of October, 2002, to the following:

Rhonda Coleman, Pro se
P.O. Box 2863
Pine Bluff, AR 71613

"s/Richard L. Angel
R. 23, App. L.